

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

**Carl Daigle; Ann Dardenne; Cassandra Dargin;  
Patricia Davis; Letha Davis; Carolyn Davis; Ed Dees;  
Faith Dent; Debra DeVare; Dorothy Dickens; LaWese  
Dillon; Elizabeth Anne Dilworth; Gerald Divincenti;  
Doris Jones Dixon; Ruby Dizon; Patsy Domingue;  
Anlatears Dorsey; Maureen Douglas; Denise Drago;  
Beverly Dry,**

Plaintiffs

v.

**C.A. No. 04cv11286-GAO**

**Indevus Pharmaceuticals, Inc., F/K/A Interneuron  
Pharmaceuticals, Inc.; Wyeth, Inc., F/K/A American  
Home Products Corporation; Wyeth Pharmaceuticals,  
Inc., F/K/A Wyeth-Ayerst Pharmaceuticals, Inc., A  
Division Of American Home Products Corporation;  
and Boehringer Ingelheim Pharmaceuticals, Inc.,**

Defendants

**PLAINTIFFS' MOTION TO REMAND**

Pursuant to 28 U.S.C. § 1447(c), plaintiffs hereby seek to remand this action to the Superior Court of the Commonwealth of Massachusetts, Middlesex County, where this action was originally filed. In support of this motion, plaintiffs state that the ground asserted for removal by defendants Wyeth, Inc. f/k/a American Home Products Corporation; and Wyeth Pharmaceuticals, Inc. f/k/a Wyeth-Ayerst Pharmaceuticals, Inc., a Division of American Home Products Corporation (collectively referred to as "Wyeth"), is improper.

More specifically, defendant, Indevus Pharmaceuticals, Inc., f/k/a Interneuron Pharmaceuticals, Inc. ("Indevus"), is a resident of Massachusetts and has not been

fraudulently joined. Wyeth cannot meet the high burden for fraudulent joinder as the allegations in the complaint and supporting affidavits show that plaintiffs have far more than a colorable claims against Indevus.

In support of this motion, plaintiffs rely upon their consolidated memorandum filed in *Amadeo, et al v. Indevus, et al*, No. 04cv11039, and supporting documents. Individual affidavits will be supplied if deemed necessary.

In the event that this motion is granted, plaintiffs request that this Court issue an order requiring that the removing defendants pay plaintiffs' just costs and any actual expenses, including attorneys fees, incurred as a result of the removal.

The Plaintiffs  
By their attorneys,

/s/ Michael S. Appel  
Edward J. Barshak (BBO # 032040)  
Michael S. Appel (BBO # 543898)  
Samuel M. Furgang (BBO # 559062)  
Sugarman, Rogers, Barshak & Cohen, P.C.  
101 Merrimac Street, 9<sup>th</sup> Floor  
Boston, MA 02114  
(617) 227-3030

Samuel W. Lanham, Jr. (*Motion to admit Pro Hac Vice filed*)  
Cuddy & Lanham, P.A.  
470 Evergreen Woods  
Bangor, ME 04401  
(207) 942-2898

Neil D. Overholtz (*Motion to admit Pro Hac Vice filed*)  
Aylstock, Witkin & Sasser, P.L.C.  
55 Baybridge Drive  
P.O. Box 1147  
Gulf Breeze, FL 32562-1147  
(850) 916-7450

Dated: July 9, 2004